Frank Leta Honda *and* District 9, International Association of Machinists and Aerospace Workers, AFL–CIO. Cases 14–CA–23169, 14–CA–23318, 14–CA–23501, and 4–CA–23575

June 17, 1996

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND FOX

On October 10, 1995, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed cross-exceptions and a supporting brief.

The Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions, to adopt the recommended Order as modified and set forth in full below,[3] to modify the remedy, and to issue a new notice.

The General Counsel filed cross-exceptions, contending that the judge inadvertently failed to make any findings or conclusions regarding Parts Manager Dwiggins' October 12, 1994 verbal warning to employees Kevin M. Farley and Erik Smith. The General Counsel contends that this warning violated Section 8(a)(3) and (1) of the Act. For the following reasons, we agree.

Paragraph 6(e) of the fourth consolidated complaint alleges that the Respondent unlawfully issued a verbal warning to Farley and Smith on October 12. This allegation was fully litigated at the hearing. Thus, the record establishes that within days after strikers Smith and Farley returned to work, Dwiggins instructed them, and a third employee, Cook, that they needed to stay busy. The three had been idle for about 5 minutes during a lull in work.[4]

When speaking to the three employees, Dwiggins did not inform them that they were being disciplined. However, Dwiggins thereafter recorded the incident in his notepad as a ''verbal warning'' and left the notepad open on his desk for several weeks where it was observed by various employees, including Smith and Farley.

The record further establishes that Farley and Smith were disparately treated in this regard. Before the strike, employees were not disciplined for being idle during work lulls. Further, Dwiggins admitted that he had not recorded other instances where he had observed employees standing around; instead, he merely gave the employees ''friendly reminders.''

Based on: (1) the disparateness of the October 12 warning; (2) its issuance promptly after the strike ended; and (3) statements by Dwiggins and another manager to replacement employees the previous week that the Respondent intended to ''abide by the rules'' in order to find ways to discharge the returning strikers, we agree with the General Counsel and find that the October 12 warning violated Section 8(a)(3) and (1).[5]

CONCLUSIONS OF LAW

1. The Respondent is an Employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The unit appropriate for collective bargaining is:

> All regular full-time and part-time service department employees employed by the Employer at its St. Charles Rock Road, St. Louis, Missouri facility, EXCLUDING sales people, office clerical and professional employees, guards, and supervisors as defined in the Act.

4. Since being certified on June 21, 1993, the Union has been, and is, the exclusive representative of the Unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. By impliedly promising a promotion if an employee refrained from supporting a strike; promising employees wage increases if they did not strike; implying that there would be a wage increase if the Union

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We adopt the judge's finding that the Respondent violated Sec. 8(a)(3) and (5) of the Act by instituting a wage freeze in 1993. We also agree with the judge that, as part of this freeze, the Respondent unlawfully discontinued its practice of reviewing employees' performance and considering them for wage increases after 60 to 90 days of employment, and annually on their anniversary dates. However, because the record establishes that employees did not automatically receive increases upon these reviews, we leave to compliance the issue of what increases, if any, employees would have received had these reviews been timely made.

[3] In its cross-exceptions the General Counsel contends that the judge erroneously omitted from his conclusions of law, proposed Order, and notice, several violations he found in his analysis. We agree and have set forth the requested modifications.

[4] Dwiggins testified that the three employees stood around for considerably longer. However, the judge generally credited the employee witnesses and found Dwiggins' testimony to be self-serving, implausible, and untrustworthy, and did not credit it over that of the General Counsel's witnesses.

[5] The fact that nonstriker Cook was also disciplined does not undercut these violations. See, e.g., *Alliance Rubber Co.*, 286 NLRB 645, 647 (1987).

were decertified and stating that there was a decertification petition in a supervisor's office that they could sign; telling employees that pay increases were frozen because of contract negotiations or because employees supported the Union; threatening to rescind an employee's wage increase if the wage increase issue was pursued; telling an employee that those who went out on strike would lose their jobs; telling an employee that the general manager was not pleased that the employee had joined the Union; threatening an employee with job loss and threatening unspecified reprisals against union troublemakers if they went on strike; telling employees that they could not get their vacation pay because of the strike; telling replacement employees that rules would be strictly enforced so that returning strikers would be fired; telling nonstriking employees that strikers were idiots and that management could not wait to get rid of them; instructing strike replacements to report alleged harassment by returning strikers; and interrogating an employee about his receiving a Board subpoena, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

6. By discriminatorily changing terms and conditions of employment and taking disciplinary action by reducing employee wages; delaying and denying timely receipt of employees' vacation pay; granting pay increases to nonstriking employees; demoting or giving different and less desirable positions and duties to returning strikers; eliminating or reducing the bonus and billing benefits and commission plans previously enjoyed by returning strikers; imposing and enforcing a stricter no-smoking policy and other rules; restricting the use of computers; issuing written and verbal warnings; failing to reinstate strikers to their former positions; denying increases for promotions; and by following practices which reduced the earnings of returning strikers, because of and in retaliation for engaging in a union strike or other protected concerted activities, the Respondent has violated Section 8(a)(3) and (1) of the Act.

7. By unilaterally making changes in terms and conditions of employment after the certification of the Union as the collective-bargaining representative of the unit employees without notice to or bargaining with the Union, including imposing a wage freeze contrary to past practice; granting wage increases for new job classifications; expanding and enforcing a no-smoking policy; implementing new safety rules; withdrawing an employee's job promotion wage increase; granting selective increases in amounts exceeding those proposed to the Union in negotiations; changing bonus and rate billing practices; increasing the number of employees by retaining replacement workers and dividing the available work among more people with a resulting decrease in real wages; implementing its final offer without a valid impasse having been reached; changing employee parking to a less desirable location; changing employee uniform and visitor rules; and imposing restrictions on employees holding second jobs and performing repair work on their own time, the Respondent has violated Section 8(a)(5) and (1) of the Act.

REMEDY[6]

Having found that the Respondent has violated Section 8(a)(1), (3), and (5) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we will order the Respondent to:

1. Make whole with interest employee Phillip J. Seymour for any loss of earnings Seymour incurred as a result of the Respondent's unlawful reduction of his wages in July 1994.

2. Make whole with interest employees Paul L. Bunfill and Erik Smith for any loss of earnings they incurred as a result of the Respondent's unlawful failure to pay them vacation pay due in August 1994.

3. Make whole with interest employees Tony Spenard, Phillip J. Seymour, and Gerald E. Motta for any loss of earnings they suffered as a result of being unlawfully demoted by the Respondent.

4. Make whole with interest all mechanics for any loss of earnings they suffered as a result of the Respondent's unlawful elimination of its ''scratch-off bonus'' program.

5. Make whole with interest employee James Hill for any loss of earnings he suffered as a result of the Respondent's unlawful elimination of the four-tenths of a billable hour credit for performing road tests.

6. Make whole with interest employee Kevin M. Farley for any loss of earnings he incurred as a result of the Respondent's unlawful elimination of his commission bonus.

7. Make whole with interest all mechanics for any loss of earnings they suffered as a result of the Respondent unlawfully increasing the number of mechanics it employed after the unfair labor practice strike, thereby reducing the flat-rate hours and earnings of the other mechanics.

8. Make whole with interest all mechanics for any loss of earnings they suffered as a result of the Respondent's unlawful reduction in the flat rate awarded for predelivery inspection (PDI) work.

9. Make whole with interest all service advisors for any loss of earnings they suffered as a result of the

[6] The General Counsel excepted to the judge's proposed remedy and requested that the Board set forth with greater specificity the manner in which the Respondent must make whole employees for any losses they suffered as a result of its unlawful acts. We grant this cross-exception, and modify the remedy.

Respondent's unlawful change in their bonus plan in March 1995.

10. Make whole with interest all employees for any loss of earnings they incurred as a result of the Respondent's unlawful wage freeze in June 1993. That includes, but is not limited to, granting mechanics the bonus received in August 1993 by employees covered by the Union's association agreement; granting mechanics the 35-cent-per-hour wage increase granted in August 1994 to mechanics covered by the Union's association agreement; implementing, retroactive to August 1993, the new premium pay plan covered in the Union's association agreement; granting porters and parts employees any increases they would have received on their annual, anniversary date reviews; granting employees increases due on their promotion to new higher paying jobs, including but not limited to promotions granted Dale Parker, Gerald E. Motta, and Tony Spenard; and any increases due employees as a result of their 60- or 90-day reviews.

The foregoing employees are to be made whole for any loss of earnings and other benefits suffered as a result of the Respondent's unfair labor practices as specified in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Because the Respondent has engaged in extensive and pervasive illegal practices—commencing at the outset of bargaining—and has encouraged employees to decertify the Union, we extend the certification year for 12 months as provided in *Thill, Inc.*, 298 NLRB 669 (1990). Additionally, because the Respondent's unlawful conduct was egregious and widespread, and demonstrated a general disregard for employees' statutory rights, we find that a broad Order is warranted. *Hickmott Foods*, 242 NLRB 1357 (1979).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified and set forth in full below, and orders that the Respondent, Frank Leta Honda, Bridgeton, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, or coercing its employees in the exercise of rights guaranteed in Section 7 of the Act by impliedly promising a promotion if an employee refrained from supporting a strike; promising a wage increase if employees did not strike; implying that there would be a wage increase if the Union were decertified and stating that there was a decertification petition in a supervisor's office that they could sign; telling employees that wage increases were frozen because of contract negotiations or because employees supported the Union; threatening to rescind an employee's wage increase if the wage-increase issue was pursued; telling an employee that those who went out on strike would lose their jobs; telling an employee that the general manager was not pleased that the employee had joined the Union; threatening an employee with job loss and threatening unspecified reprisals against union troublemakers if they went on strike; telling employees that they could not get their vacation pay because of the strike; telling replacement employees that rules would be strictly enforced so that returning strikers could be fired; telling nonstriking employees that strikers were idiots and that management could not wait to get rid of them; instructing strike replacements to report harassment by returning strikers; and interrogating an employee about his receiving a Board subpoena.

(b) Discriminatorily changing terms and conditions of employment and taking disciplinary action by reducing employee wages; delaying and denying timely receipt of employees' vacation pay; granting pay increases to nonstriking employees; demoting or giving different and less desirable positions and duties to returning strikers; eliminating or reducing the bonus and billing benefits and commission plans previously enjoyed by returning strikers; imposing and enforcing a stricter no-smoking policy and other rules; restricting use of computers; issuing written and verbal warnings; failing to reinstate returning strikers to their former positions; denying increases for promotions; and following practices which reduced the earnings of returning strikers because of or in retaliation for their engaging in a union strike or other protected concerted activities.

(c) Making unilateral changes in terms and conditions of employment after the certification of the Union as the collective representative of the unit employees without notice to or bargaining with the Union, with respect to imposing a wage freeze contrary to past practices; granting wage increases for new job classifications; expanding and enforcing a no-smoking policy; implementing new safety rules; withdrawing an employee's job promotion wage increase; granting selective increases in amounts in excess of those proposed to the Union in negotiations; changing bonus and rate billing practices; increasing the number of employees by retaining replacement workers and dividing the available work among more people with a resulting decrease in real wages; implementing its final offer without a valid impasse being reached; changing employee parking to a less desirable location; changing employee uniform and visitor rules; and imposing restrictions on employees holding a second job and performing repair work on their own time.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful warnings given to employees Paul Huffmon, Kevin M. Farley, and Erik Smith, and within 3 days thereafter notify the employees in writing that this has been done and that the warnings will not be used against them in any way.

(c) On request of the Union rescind all or part of the unilaterally made changes in terms and conditions of employment and retroactively restore preexisting terms and conditions of employment and, on request, bargain in good faith with the Union as the exlusive bargaining agent of the above appropriate unit of its employees with respect to their wages, hours, and other terms and conditions of employment and embody any understanding reached in a signed agreement.

(d) Recognize the Union on resumption of bargaining in good faith and for 12 months thereafter as if the initial certification year had not expired.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Bridgeton, Missouri, facility copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 1, 1993.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.''

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act, by impliedly promising a promotion if an employee refrained from supporting a strike; promising wage increases if employees did not strike; implying there would be a wage increase if the Union were decertified and stating that there was a decertification petition in a supervisor's office that they could sign; telling employees that wage increases were frozen because of contract negotiations or because employees supported the Union; threatening to rescind an employee's wage increase if the wage increase issue was pursued; telling an employee that those who went out on strike would lose their jobs; telling an employee that the general manager was not pleased that the employee had joined the Union; threatening an employee with loss of his job and threatening unspecified reprisals against union troublemakers if they went on strike; telling employees that they could not get their vacation pay because of the strike; telling replacement employees that rules would be strictly enforced so that returning strikers would be fired; telling nonstriking employees that strikers were idiots and that management could not wait to get rid of them; instructing strike replacements to report harassment by returning strikers; and interrogating an employee about his receiving a Board subpoena.

WE WILL NOT discriminate or retaliate against employees for selecting the Union as their collective-bargaining representative or for engaging in a strike or other protected concerted activity, by discriminatorily changing terms and conditions of employment and taking disciplinary action by reducing employee wages;

delaying and denying timely receipt of employees' vacation pay; granting pay increases to nonstriking employees; demoting or giving different and less desirable positions and duties to returning strikers; eliminating or reducing the bonus, billing benefits, and commission plans previously enjoyed by returning strikers; imposing and enforcing a stricter no-smoking policy and other rules; restricting use of computers; issuing written and verbal warnings; failing to reinstate returning strikers to their former positions; denying increases for promotions; and following practices which reduced the earnings of returning strikers.

WE WILL NOT make unilateral changes in terms and conditions of employment affecting unit employees without notice to or bargaining with the Union, with respect to imposing a wage freeze contrary to past practice; granting wage increases for new job classifications; imposing and enforcing a stricter no-smoking policy; implementing new safety rules; withdrawing an employee's job promotion wage increase; granting selective increases in amounts exceeding those proposed to the Union in negotiations; changing bonus and billing practices; increasing the number of employees by retaining replacement workers and dividing the available work among more people with a resulting decrease in real wages; implementing our final offer without a valid impasse being reached; changing employee parking to a less desirable location; changing employee uniform and visitor rules; and imposing restrictions on employees holding second jobs and performing repair work on their own time.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the warnings given Paul Huffmon, Kevin M. Farley, and Erik Smith and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL, on request of the Union, rescind all or part of the unilaterally made changes in terms and conditions of employment and, on request, bargain in good faith with the Union as the exclusive bargaining agent of the following employees with respect to their wages, hours, and other terms and conditions of employment and embody any understanding reached in a signed agreement:

> All regular full-time and part-time service department employees employed by us at our St. Charles Rock Road, St. Louis, Missouri facility, EXCLUDING sales people, office clerical and professional employees, guards, and supervisors as defined in the Act.

WE WILL recognize the Union on resumption of bargaining in good faith and for 12 months thereafter as if the initial certification year had not expired.

FRANK LETA HONDA

Dorothy D. Wilson, Esq., for the General Counsel.
Robert B. Vining Jr., Esq., of Clayton, Missouri, for the Respondent.
Tony Rippeto, of Bridgeton, Missouri, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This matter was heard in St. Louis, Missouri, on May 22–25, 1995. Subsequently briefs were filed by the General Counsel and the Respondent. The proceeding is based upon an initial charge filed August 8, 1994,[1] as subsequently amended, by District 9, International Association of Machinists and Aerospace Workers, AFL–CIO. The Regional Director's consolidated complaint dated May 17, 1995, alleges that Respondent Frank Leta Honda of Bridgeton, Missouri violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act by interfering with employee rights and engaging in numerous activities including the imposition of a wage freeze, threats and promises of benefits, interrogations and encouragement of a decertification petition, demotion and warning of employees, changing duties and terms and conditions of employment without bargaining, and by failing and refusing to reinstate striking mechanics to their former terms and conditions of employment because employees had engaged in union and concerted activities.

Subsequent to the hearing the General Counsel moved to correct the transcript and to amend the consolidated complaint further based on the evidence adduced at hearing. The Respondent also moved to reopen the record to admit certain documents relating to an additional charge filed against Respondent. The General Counsel opposes Respondent's motion to reopen and contends that the documents are not relevant to the issues in these cases.

The motion to correct the transcript is granted and received into evidence as General Counsel's Exhibit 80. The motion to amend the complaint is based on matters that were fully litigated and it is therefore granted.[2] The matters sought to be introduced by the Respondent relate to a new charge under investigation referred to during the hearing by the General Counsel. The matters sought to be introduced reflect the charge and the disposition of the matter (no complaint was issued). They will be received only for the purpose of

[1] All dates are in 1994 unless otherwise indicated.

[2] After submitting her motion to amend the transcript, General Counsel noticed that the May 17 consolidated complaint inadvertently skipped from par. 9B to 9D. Paragraph 9C should be the exact same paragraph which appeared in the April 28, 1995 consolidated complaint, G.C. Exh. 1(kk).

reflecting the filing and disposition and will be marked and received as Respondent's Exhibits 3, 4, and 5.

On a review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is engaged in the retail sale and repair of new and used automobiles and the sale of automobile parts at its Bridgeton, Missouri facility, it has an annual gross revenue in excess of $500,000; and it annually purchases and receives goods and materials valued in excess of $50,000 directly from points outside the State of Missouri. It admits that all times material it has been an employer engaged in operations affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Respondent's Bridgeton Honda facility, located in a suburb of St. Louis, is owned by Frank Leta, who also owns a nearby Acura dealership on Tesson Ferry Road. Jeff Keesling is the general manager in charge of day-to-day operations at both facilities. He has an office at both locations and spends 55 percent of his time at the Honda dealership.[3] It employs approximately 46 to 47 employees who comprise a sales staff for new and used cars; an office staff, including managers and clerical employees; and a service department comprising technicians, service writers, parts employees, and porters. Service Manager Rick Witges and Parts Manager Jerry Dwiggins directly supervised the employees involved in the events here.

In response to a union petition filed on April 19, 1993, an election was held on June 11, 1993. The Union won the election by a vote of 17 to 4 and on June 21, 1993, it was certified as the collective-bargaining representative of the following unit of Respondent's employees:

> All regular full-time and part-time service department employees employed by the Employer at its St. Charles Rock Road, St. Louis, Missouri facility. EXCLUDING sales people, office clerical and professional employees, guards, and supervisors as defined in the Act.

Prior to this certification, Respondent's employees had not been represented by a union, however, since 1988, Respondent had been paying its mechanics the same wages paid by competitors under the terms of the Standard Automotive Agreement established in negotiations between the Union and the Area Automotive Association.

Subsequent to the certification and a Union request for certain information, negotiations between Respondent and the Union bargain July 19, 1993. Union Negotiator David Meinelli proposed that Respondent agree to a 1-year contract based on the expiring agreement with the Greater St. Louis Automotive Association that Respondent had been following with regard to wage increases. The Respondent declined and the parties agreed to postpone further negotiations until negotiations were completed with the association for a new agreement. A new association agreement was reached in early August 1993; however, the next meeting was not held until October 26, 1993. The Union presented a proposal which consisted of the new association agreement and an addendum which would address terms and conditions of employment for the parts employees who were not covered in the association agreement. The meeting adjourned so that Respondent could review the documents. On November 8, 1993, the parties met again and went through the new association agreement article by article. Respondent agreed to some articles as written, proposed alternative language to some articles, and proposed deleting other articles. The parties met again on January 25, and February 25, and discussed vacation and seniority issues and the Union gave Respondent another proposed addendum. The meeting on January 25 included an agreement on the number and identification of holidays as well as the holiday language by the Union incorporated in its Standard Automotive Agreement. In addition, the issue of the number of weeks of vacation in section 5.2 under ''Seniority,'' was discussed. Although Meinelli did not recall a meeting on February 17, Keesling, who participated in all of the negotiating sessions for the Respondent testified that the parties met again on that date at which time an agreement was reached on the language incorporated in article 5.2.

At a meeting held on February 25, Respondent handed out proposals on job descriptions and duties and proposed that wages be increased by 25 cents in the first year and 35 cents in the second and third years. The Union also proposed to make the union benefits effective in 1-year increments, with health insurance being effective immediately, and dental and vision becoming effective in the second and third years respectively, and continued its position on the various benefit plans included in the Standard Area Agreement.

On April 12, the parties met again. The Company revised it's offer by increasing the first year a wage increase to 35 cents per hour effective ratification, maintaining the last 2 years at 35 cents per hour in each year. In addition, the Company proposed a minimum hiring rate of $5.75 per hour and a minimum rate of pay after 6 months of $6.25 per hour. This was presented as Respondent's written final offer. The orally proposed wage increases of 35 cents per year of a 3-year agreement contained no job classifications, descriptions, or wage rates for any of the parts employees or porters, and no changes in existing benefits.

Union Representative Meinelli was in a serious automobile accident in June 1994, and was replaced as chief negotiator by Union Representative Larry Smith, assisted periodically by Union Organizer Tony Rippeto. At the next meeting held on July 26, Union Representative Smith presented a new addendum which incorporated agreements reached by the parties during the past negotiating sessions as well as a resubmission of its proposal on the parts department, service helper, utility employees, and the various benefit plans. The Company indicated that its position given to the Union in April remained unchanged and that it intended to implement its offer.

During this period of negotiations after the certification of the Union (until March 1995), none of the parts employees received the normal increases expected on their anniversary

[3] Unless otherwise noted, all following references will relate to the Honda location only.

dates. Three weeks after parts counterman Erik Smith did not receive his expected pay increase in September 1993, Smith asked his immediate supervisor, Parts Manager Jerry Dwiggins, about it and Dwiggins replied that all raises were frozen until something was done one way or the other with the Union. Parts employee Paul Huffmon did not receive his anniversary raise in January 1994, and he recalled that Dwiggins had said before the election that if the Union was voted in, he should not look for a raise at his next review. Parts employee Kevin Farley also had an anniversary in January 1994 and received no increase or pay review.

Respondent also did not give wage increases to the porters and mechanics. Service Manager Witges admits that he told employees his authority to give increases was frozen because of contract negotiations. Some individuals who were promoted and normally would have received an increase in pay, did not receive a pay increase. Respondent's records indicate that in July 1993, Dale Parker was promoted from used car mechanic to a line technician but received no pay increase. Used car technician Jerry Motta was hired in August 1993, told that he would receive a 60-day review and possibly a raise at that time, but received neither. The following June, Motta was promoted from used car technician to line technician, but still received no pay increase as Witges explained that wages were frozen because of contract negotiations.

The Respondent made an exception for employee Philip Seymour and when Seymour changed from service porter to new car porter effective June 13, he received a pay increase, from $5.50 to $6.50 per hour. Manager Witges told Seymour not to say aything about the increase to other employees. Seymour testified that he asked if that was because of the Union, and Witges nodded yes. Seymour told Parker about the raise and in late June 1994, Parker testified that he asked Witges about the wage situation and Witges responded that wgaes were still frozen but that ''this thing will be over in a couple of weeks'' and you'll get your raise.

A few days before July 19, line technician Paul Bunfill asked Witges whether employees were going to receive pay increases on August 1 like they usually did and Witges admitted that he told Bunfill there was a freeze on all wages because of the union negotiations. Parker testified that he spoke to Witges again on July 19, and mentioned that Seymour had received a pay increase. Witges replied that they had decided ''up front'' to give Seymour a raise besides that Seymour ''didn't sign a Union card.'' Parker said he would pursue getting a raise some other way and Witges said that if Parker did that, they would have to take away Seymour's raise. Witges also said that ''for the record'' wages were still frozen, but ''off the record'' Parker should talk to other employees about decertifying the Union. Witges testified that he responded to Parker by telling him there were two ways to resolve the wage freeze situation. One way was for an agreement to be reached with the Union on a contract. The other way was to petition to remove the Union.

Motta spoke to Witges later in the day on July 19, and pointed out that he had never received his 60-day review and wanted to know what was going on with raises. Witges told him that ''you and Dale (Parker) and others are deserving of raises, but they are frozen right now.'' Witges added that on August 2, employees would take a strike vote and those who wanted to remain with the company had a job and those who did not were out on their own. Witges said that those who remained with the Company would receive a pay raise and that Respondent would make it worth their while. Sometime after Witges' conversation with Parker on July 19, General Manager Keesling told Witges to withdraw Seymour's pay raise because of the negotiations with the Union, and Seymour's wage increase was withdrawn effective July 29.

During late July and early August, similar comments were being made by Parts Manager Dwiggins to his employees. In late July, parts employee Erik Smith testified that when he returned from lunch Dwiggins told him there was a petition over in Rick Witges' office if Smith wanted to sign it. In early August, Smith and Dwiggins had another conversation and Smith testified that Dwiggins offered to make him assistant manager of the parts department, with the pay Smith had coming to him. Smith said he replied that if the employees voted to go on strike he could not accept, but if they voted to decertify the Union, he would accept the offer.

On August 2, the day of the scheduled union meeting to vote on whether to go on strike, Witges spoke with Motta out in the shop and asked him if he had any questions about what was going to transpire that evening. Motta testified that he responded by asking Witges what was going to transpire at Witges' end. Witges replied that those who showed up for work the next day would have a job and those who did not show up, would not, and said that, ''there is a lot of people who want to forget about the Union and get down to business.'' He then looked around the shop and said that it was a shame that those who had the most to lose were causing all the trouble.

On August 2, the Union held a meeting at which employees voted to authorize a strike to begin on August 9. Before voting, they discussed how Parker and Motta had been told by Witges that they would get raises if it were nor for the Union in the shop. The Union and representatives explained they thought that was unlawful and they thought the Company was trying to get rid of the Union any way they could and that the Union planned to file unfair labor practice charges against Respondent for the ongoing effort to get a petition filed to decertify the Union.

A strike began on Tuesday, August 9, with all but five employees participating. The next day, lube technician Mike Roth returned to work and in late September technician Dale Parker returned. The Respondent hired replacement employees including mechanics Cliff Garry, Rick George, Bill Javarck, Aaron Jones, Scott Emke, and Tony Fanning; porters Sam Brady and Mike Wyatt; and parts department employees Ken Savant, Lin Rowe, Jason Cook, and Rich Fischer. It was not established whether these replacements were told or understood they would be permanent.

After the strike began the Respondent changed its earlier policy of not giving pay increases during negotiations and on September 3, it increased the pay of used car porter Ron Fowler from $6 to $7.50 an hour and lube technician Mike Roth from $7 to $9 an hour and it asserts that this occurred because Roth began performing line technician duties and Fowler became a ''used car inventory specialist.'' Other porters were told by Witges in early 1995, that because of his seniority Fowler was made head porter, however, it was observed that his duties did not change with the exception that he would ask someone who was not busy to do something that needed to be done.

An unconditional offer to return to work on behalf of all the striking employees was made by letter dated September 27. In response, the Respondent set up a meeting with the Union on October 4, and it was arranged for the strikers to return on Monday, October 10, after they contacted Respondent by October 6 for their schedules. Otherwise, there was no discussion with the Union about what would happen to the replacements hired by Respondent during the strike.

Employees Parker and Sam Brady testified that on Friday, October 7, Service Manager Witges had a meeting with the replacement mechanics and porters regarding the strikers' return to work. He said that the strikers were coming back and the replacements would have to be real careful to adhere to all the rules and do everything by the book because Witges intended to find things they did wrong so he could fire them. Parker also testified that Witges said for them not to be concerned about the strikers coming back because they probably would all be gone in 30 or 60 days anyway.

Witges announced that two of the mechanics, Scott Emke and Tony Fanning would be transferred to the Leta Acura store and told them not to worry, as soon as he got rid of some of the strikers, they would be back. Witges also told the replacements to be careful about what they said to the strikers and not to be influenced by what the strikers said to them. Witges said that if the strikers talked to them in a harassing way, the replacements were to report that and the strikers would be fired.

Parker also spoke with Parts Manager Dwiggins at the parts counter and he testified that Dwiggins said that the strikers were going to return but that everyone was going to have to abide by the rules, or else, and that the Respondent was going to crack down on moonlighting. New car porter Brady also testified that Dwiggins said he thought the strikers were idiots and that he could not wait to get rid of them.

When the strikers returned to work on October 10, they faced a number of changes, none of which had been mentioned to the Union. These changes and other actions related to the treatment and discipline of the former strikers are the basis for numerous complaints alleged to constitute unfair labor practices and they will be set forth in detail and evaluated in the following discussion section of this decision.

III. DISCUSSION

The record shows that in June 1993, the Union became the certified bargaining representative of the Respondent's employees following a 17 to 4 vote. The parties engaged in bargaining on numerous occasions, however, testimony indicates that as time went on the employer began to anticipate the possibility that the employees' union sympathies might be changed and it anticipated the further possibility of an employee decertification attempt (after the 1-year anniversary of the certification), which would discharge its obligation to continue negotiations with the Union. Instead, however, employees responded to the Respondent's failure to grant expected wage increases during negotiations (and the failure to reach an agreement), with a strike. Although the Respondent thereafter recalled former strikers for whom the Union made an unconditional offer to return to work, the recall was made under unique conditions whereby the majority of employees hired as strike replacements also remained on the job.

Here, the principal issues involve Section 8(a)(1) of the Act and a number of statements by the Respondent's supervisors that allegedly threaten and otherwise restrain and interfere with the employees Section 7 rights; Section 8(a)(3) of the Act and the alleged retaliatory or disparate altering of terms and conditions of work of and failing to completely reinstate the strikers to their former positions; and Section 8(a)(5) of the Act and the freezing of wages and making of unilateral changes in terms and conditions of work.

The recitation herein of factual statements are my factual conclusions based on the demeanor of the various witnesses and my evaluation of what is the most credible testimony. In general, I conclude that although some of the General Counsel's employee witnesses had an imperfect recall of some dates or details, they otherwise testified in a convincing, believable manner and in instances where testimony to the contrary was placed on the record by the Respondent's witnesses (most specifically Managers Witges and Dwiggins), I find the latter testimony to be self-serving, implausible and untrustworthy and, I find that it should not be credited over the testimony of the General Counsel's witnesses. This is especially true in the numerous situations where the employee witnesses gave a narrative description of the surrounding circumstances and the Respondent's managers gave bare denials that they had made the statements attributed to them.

A. *Alleged Violations of Section 8(a)(1)*

On about April 13, employee Erik Smith told Manager Dwiggins that everyone including Smith planned to join the Union that day during lunch. Dwiggins asked Smith to wait until Dwiggins could have a meeting with Keesling to see if Dwiggins could get Smith into some sort of semi-management position such as assistant manager or outside sales manager so Smith would not have to join the Union. After lunch, Dwiggins asked if Smith joined the Union. Smith replied yes, and Dwiggins said nothing further until shortly before the strike began when Dwiggins then offered to make Smith the assistant parts manager with the pay he had coming to him. Smith replied that he could not accept if employees voted to go on strike, but if the employees voted to decertify the Union he would accept. Inasmuch as Dwiggins admitted talking to Keesling about putting Smith in a different position if that was possible, I specifically credit Smith's testimony on this matter. I conclude in both instances that Dwiggins statement impliedly promising a promotion to Smith if Smith refrained from joining the Union or supporting the strike and that it was unlawful in each instance, see *Family Foods*, 300 NLRB 649, 662 (1990), and I find that the Respondent is shown to have violated Section 8(a)(1) of the Act as alleged in paragraphs 5(a) and (I) of the complaint.

As described in part II above, the record shows that Manager Witges made statements to employees Seymour, Motta, Paul Bunfill, and Parker to the effect that wages were frozen because of the Union and also told Parker that if he pursued the issue of Seymour's being granted a raise despite the policy (because Seymour did not sign a union card), Seymour's raise would be rescinded.

Here, it is shown that employees received customary pay increases and performance reviews according to regular, established practices and by telling employees that pay increases are frozen or are not being given to employees because of the Union or because of their support of the Union,

or because of negotiations with the Union is unlawful, see *Harrison Ready Mix Concrete*, 316 NLRB 242 (1995), and *Lamonts Apparel*, 317 NLRB 286 (1995)

I also find that thereafter threatening to rescind Seymour's wage increase if the issue was pursued is also unlawful, *Sunbelt Mfg. Co.*, 308 NLRB 780, 784 (1992). Witges also told Parker to get hold of some of the people who said they wished the Union had never gotten started. and try to decertify the Union. He then told Parker there were two ways to resolve the wage freeze situation and get a wage increase. One way was for an agreement to be reached with the Union on a contract. The other way was to petition to remove the Union. Implying that there would be a wage increase if the Union were decertified is unlawful. See *Caterair International*, 309 NLRB 869, 879 (1992), and I find that in each instance the Respondent is shown to have violated Section 8(a)(1) of the Act as alleged in paragraphs 5(B) through (G) of the complaint.

On July 19, when Motta spoke with Witges and was told of the wage freeze due to contract negotiations, Witges also said that when the employees took the strike vote and those who wanted to remain with the Company had a job, and those who did not would be on their own and added that if employees stayed with the Company, they would get raises and Respondent would make it worth their while. Telling Motta, without further explanation, that employees who went out on strike would lose their job is also unlawful, as is promising a raise to employees who do not participate in a strike. See *Baddour, Inc.*, 303 NLRB 275 (1991); and *Caterair International*, supra.

In late July Parts Manager Dwiggins told Smith that there was a petition over in Rick Witges' office if Smith wanted to sign it. this statement was made in the context of a statement that employees could get wage increases if the Union was decertified. Moreover, the petition was identified as being in the office of a supervisor, and this would make it likely management would know who signed (or didn't sign), the petition, and it makes the statement coercive and illegal, see *Manna Pro Partners*, 304 NLRB 782, 790 (1991), and *St. Mary's Medical Center*, 297 NLRB 421, 423 (1989).

In early August Dwiggins told Smith that General Manager Keesling was not pleased that Smith had joined the Union. When this statement is considered in the context of Respondent's other unlawful statements and its promise to promote Smith to a semi-management position if he did not join the Union, it appears that the statement constitutes an implied threat of retaliation because of Smith's union activities, see *LWD, Inc.*, 309 NLRB 214, 217 (1992).

On August 2, the day on which the Union had scheduled a strike vote, Manager Witges asked Jerry Motta if Motta had any questions about what was going to transpire that evening and then stated that those who showed up for work the next day would have a job and those who did not show up, would not. Witges continued that, ''there is a lot of people who want to forget about the Union and get down to business'' and that it was a shame that those who had the most to lose were causing all the trouble. I do not find that Witges' initial question rises to the level of interrogation about what would occur at the meeting as alleged by the General Counsel. The statement, however, did threaten Motta with job loss if he went on strike and it also implied that union supporters are troublemakers who are likely to suffer unspecified loses if there is a strike, and I find such a statement to be unlawful. See *Treanor Moving & Storage Co.*, 311 NLRB 371 374 (1993).

Under these circumstances I conclude that the General Counsel has shown that the Respondent's statements on these occasions constitute conduct that is coercive in nature and which interferes with the employees' Section 7 right and I find that its actions in these respects (except the alleged interrogation), are shown to be unlawful and in violation of Section 8(a)(1) of the Act, as alleged in paragraphs 5(F), (H), (J), and (K) of the complaint.

On August 5, the Friday before he was scheduled to begin his vacation, Bunfill asked Witges for his vacation check. Witges told him Keesling said he could take his vacation early (prior to Bunfill's August 21 anniversary date), but could not get early pay for it ''due to what's going on.'' It otherwise was established that Respondent's usual policy was that employees could receive their vacation pay before their vacation if they requested it. The reference to what was going on appears to be a clear reference to the Union's decision to strike. The statement implies that Bunfill is being penalized because of the employees' lawful protected concerted activity conduct in voting to go out on strike and it is therefore illegal and in violation of Section 8(a)(1) of the Act, as alleged in paragraph 5(L) of the complaint.

On October 7, Witges told the replacement workers that they would have to adhere to all the rules because Witges intended to strictly enforce the rules so Witges could fire the strikers. I conclude that his statement was a clear threat to discharge the strikers through stricter enforcement of the rules and was therefore unlawful. See *Treanor Moving & Storage*, supra, and *Heartland of Lansing Nursing Home*, 307 NLRB 152, 159 (1992). He also said that two replacement mechanics were being transferred to the Leta Acura store but he assured them they would be back as soon as Witges got rid of some of the strikers. This implies that he was threatening to discharge returning strikers and is unlawful. See *Alexian Bros. Medical Center*, 307 NLRB 389 (1992). In addition, Witges told the replacements to be careful about conversations and to report harassment of them by strikers and such a statement in this context is unlawful. See *Nashville Plastic Products*, 313 NLRB 462 (1993), and *Arcata Graphics*, 304 NLRB 541 (1991).

About the same time Dwiggins told Parker that the strikers were going to return but that everyone was going to have to abide by the rules or else and he also told Brady that he thought the strikers were idiots and could not wait to get rid of them. These statements also are implicit threats to discharge the strikers and, accordingly, I conclude that the General Counsel has shown that in each of these instances the Respondent made unlawful threats that violate Section 8(a)(1) of the Act, as alleged in paragraphs 5(M) and (N) of the complaint.

During the first week of November, Dwiggins asked parts employee Paul Huffmon if Huffmon had gotten a subpoena for a hearing (a Board hearing in this matter was at one time scheduled for November 7, 1994). Huffmon replied that he did not know what Dwiggins was talking about. At the hearing Dwiggins explained that he wanted to see if he would have enough employees for the following Monday, but he did not explain to Huffmon why he was inquiring. Under these circumstances a supervisor's interrogation of an em-

ployee about being subpoenaed is unlawful, see *Metalite Corp.*, 308 NLRB 266, 272 (1992), and I find that the Respondent is shown to have violated Section 8(a)(1) of the Act, in this respect as alleged in paragraph 5(O) of the complaint.

B. *Alleged Violations of Section 8(a)(3)*

In a proceeding involving changes in conditions of employment and disciplinary action against employees, applicable law requires that the General Counsel met an initial burden of presenting sufficient evidence to support an inference that the employees' union or other protected concerted activity concerted activity were a motivating factor in the employer's decision to change their conditions of employment or to discipline them. Here, the record shows that the Respondent clearly was aware of the employee's union activity and which employees has engaged in the strike. It also engaged in certain unfair labor practices, as discussed above, which include actions or statements that threatened the jobs and pay levels of strikers and clearly showed the Respondent's union animus. I also credit Smith's testimony that Manager Dwiggins told him before the election that Owner Frank Leta would never sign a contract and, under these circumstances, I find that the General Counsel has met his initial burden by presenting a prima facie showing, sufficient to support an inference that the employees' union activities in voting for a union and then engaging in a strike were a motivating factor in Respondent's subsequent decision to change the conditions of employment and to discipline certain of the former striking employees who were recalled after the Union made its unconditional offer to return to work. Accordingly, the testimony will be discussed and the record evaluating in keeping with the criteria set forth in *Wright Line*, 251 NLRB 1083 (1980), approved in *Transportation Management Corp.*, 462 U.S. 393 (1983), to consider Respondent's defense and whether the General Counsel has carried his overall burden.

As pointed out by the Court, in *Transportation Management Corp.*, supra:

> [A]n employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct activity.

Here, there is credible testimony which shows that Respondent's managers made incriminating statements linking the wage freeze to the negotiation with the Union, asserting that the return of the striking employees required a more strict work environment and making assurances to replacement employees that the strikers would be fired or would be gone in a few months. Accordingly, I find that the General Counsel has made a strong prima facia case and that the Respondent's burden here is substantial.

In July, the Respondent withdrew the $1-per-hour wage increase previously granted to Seymour when he was promoted to new car porter. Witges testified that General Manager Keesling instructed him to withdraw the increase because the Respondent was in negotiations with the Union. This was only an issue because Seymour, who had not supported the Union, had been given a raise contrary to its wage freeze policy (for union supporters) and other employees found out about it. Under these circumstances, it is apparent that the withdrawal of Seymour's raise was tied in with its unwarranted imposition of a wage freeze on almost all of the employees because of the ongoing negotiations and it was motivated by the Respondent's desire to keep other employees who found out about it from using it as a justification for a change in their own frozen wages. Accordingly, the reduction in Seymour's wages was discriminatorily motivated, see *Bay Metal Cabinets*, 302 NLRB 152, 174 (1991), it would not have occurred but for the protected activity, and therefore it was in violation of Section 8(a)(3) of the Act, as alleged in paragraph 6(A) of the complaint.

On August 5, the Friday before the strike began, Bunfill was denied the check he requested for the vacation he was taking the following week, contrary to Respondent's usual practice. Witges specifically told Bunfill that General Manager Keesling had said Bunfill could take his vacation but could not be paid for it ''due to what's all going on;'' and Bunfill was not paid for that week of vacation until shortly before the end of the strike in late September. Although the Respondent contends that Bunfill did not receive his vacation pay on August 5 because he had not reached his anniversary, that was not the reason given. Moreover, his August 21 anniversary passed and he was not paid for another month. Employee Erik Smith also was scheduled to take vacation in August 1994, the week after the strike began but was not paid for that week. Although Smith made no specific demand for this pay, the respondent has known specifically since at least December 7, when it was identified in the complaint that Smith contended he was due his vacation pay.

Under these circumstances, it appears that both Bunfill and Smith were delayed or denied their timely receipt of their due vacation pay because of their participation in the strike and I find that the Respondent has not shown that they would have been treated this way in the absence of their protected concerted activity conduct. Accordingly, Respondent's conduct violates Section 8(a)(3), as alleged in paragraph 6(B) and (C) of the complaint. See *Gaywood Mfg. Co.*, 299 NLRB 697, 706 (1990);

In early September (September 3), the Respondent granted wage increases to nonstrikers Mike Roth and Ron Fowler. Roth received a $2-per-hour increase and Fowler received a $1.50-per-hour increase. The Respondent asserts these wage increases were based on the employees promotion, however, the additional duties were minimal at best and do not explain the substantial size of the increases, especially in view of the Respondent's refusal prior to the strike to grant wage increases when employees were promoted. Accordingly, the record supports an inference that Roth and Fowler were discriminatorily given benefits not given to striking employees as a reward for crossing the picket line and I find that the General Counsel has demonstrated conduct that violates Section 8(a)(3) of the Act, as alleged in paragraph 6(J) of the complaint.

In October, when Spenard returning from the strike, his position was changed from used car technician to a newly created position of light duty tech/lube man/quality control. This meant that instead of being in the used car position from which he could obtain a promotion to line technician, he was demoted to a position that required him to drive customers home and to pick up parts and it involved less mechanical skill than what he did when first started working for

Respondent. This was brought to the Respondent's attention at a bargaining session on October 25; However, no changes were made and Aaron Jones, a replacement employee (hired September 14, and paid $12.50 per hour versus Spenard's $9.75 per hour), continued to do most of the used car work until he left in early 1995. Otherwise, the Respondent failed to establish any justification for Spenard's demotion and it did not establish that Jones was a permanent replacement.

The Respondent also demoted Seymour who, before the strike, was the new car porter working 9 a.m. to 6 p.m. On his return Seymour was made a service porter working 6:45 a.m. to 3:45 p.m. (The new car porter job is preferable to the service porter position because the new car porter normally does not take out trash or clean up the shop.) The Respondent asserts that it merely responded to Seymour's request to have a Monday through Friday schedule. Witges admitted, however, that he could have changed the new car porter's schedule to Monday through Friday, but chose not to do so.

After the strikers returned the Respondent eliminated its so-called ''scratch-off'' bonus plan for line mechanics and a previous four-tenths-billable-hour credit given to employee Hill. Respondent offered no explanation for the elimination of these benefits other than its conclusion that the plans lacked effectiveness, and it failed to convincing explain why the change occurred only on the strikers' return.

The Respondent also began to enforce a nonsmoking policy, and it implemented a new rule requiring wearing safety glasses in the parts department while making keys. As noted, I have credited the testimony that it made statements to the replacement employees about cracking down on the enforcement of rules and finding a way to get rid of the strikers and the Respondent does not explain change in enforcement and the apparent expansion of the no-smoking rule but merely asserts that the policy was in effect for 2 years and it disclaims any awareness that it was not actively enforced prior to the return of the strikers. Smith testified that as he was halfway through making his first key after returning from the strike Dwiggins came out of his office and taped up a note saying safety glasses must be used when operating the key machine. Although the desirability of using eye protection on a grinding machine might seem to be self-explanatory, no explanation is given for the timing of the implementation of this rule on the occasion described immediately above.

When the former strikers in the parts department (Kevin Farley, Erik Smith, and Paul Huffmon), returned, the respondent took away their full access to the computer, thereby prohibiting them from doing parts order processing work they previously performed, and it instead had them make substantially more parts deliveries than they previously made. In addition, Dwiggins instructed them that they must keep busy, and to clean shelves and sweep the floor. The replacement workers, by contrast, spent very little time making deliveries and otherwise had business cards made for them which were displayed on the front counter. Former striker Farley had similar business cards before the strike, but had none on his return, and on his return Farley's commission plan was eliminated. Dwiggins' explained that Farley was not doing a good job and they had planned to take it away from him at his next pay review anyway, however, Dwiggins acknowledged that he had never expressed any displeasure to Farley about the type of job he was doing. Moreover, Farley's anniversary date was in January and Respondent did not explain why it chose to eliminate the commission when Farley returned from strike rather than as they asserted had planned, waiting until Farley's next pay review.

Here, I find that the Respondent has failed to present legitimate reasons for this series of actions or to persuasively show that it would have taken these actions at the time the strikers returned to work even in the absence of their protected conduct. In view of its retention of replacement workers in the more favorable assignments previously performed by the strikers and Respondent's statement to the replacement concerning the probability of a short tenure for the returning employees, I conclude that the Respondent in fact did change their former conditions of work because of their participation in the strike and in order to provide a basis for terminating them or to induce their to leave. Accordingly, I also find that this conduct violates Section 8(a)(3) of the Act, as alleged in paragraph 6(D) of the complaint.

Following the strikers return and the initial changes in certain working conditions, on October 17, the Respondent followed up on its threats and issued a verbal warning to Huffmon which Dwiggins uncharacteristically also recorded in writing (as a verbal warning). Dwiggins did not investigate a replacement mechanics complaint that Huffmon had been rude to him and even told Huffmon that he was not saying Huffmon engaged in the conduct complained of but without even asking Huffmon about what allegedly occurred, Dwiggins warned him that being rude and uncooperative would not be tolerated.

Farley credibly testified that about the first week after the end of the strike he overheard two salesmen for other company's ask Dwiggins about the whereabouts of parts replacement employees Jason Cook (who was laid off after one week) and Rich Fischer (who became a porter) and then heard Dwiggins answer ''Don't worry about them. They'll be back. It's just a matter of time.'' As noted above, in early November Dwiggins illegally interrogated Huffmon about getting a subpoena. Then, on December 16, Dwiggins gave Huffmon a written warning dated December 14, for a billing error on December 12,. The warning said that similar infractions in the future could lead to disciplinary action up to and including discharge. The record shows that other employees have made mistakes in not billing orders properly but have not been disciplined. The first Huffmon heard about the mistake was on Monday the 12th when Dwiggins told him he had not billed a clutch pressure plate and a throw out bearing on a referral order. Dwiggins said that he had corrected the error before the customer was billed. Huffmon told him that the parts had been listed when he hit ''enter'' on the new computer and nothing more was said until he was called to Witges' office where both Witges and Dwiggins gave him the warning. Huffmon noted that the computer system was about a month old, and that employees were still learning on it. It otherwise was shown that parts employees Savant and Rowe had also made contemporaneous billing mistakes and were not disciplined for them. (The only exception was the written warning to Savant in April 1995, well after the complaint had issued on the December write-up to Huffmon.)

As noted above, when Tony Spenard was demoted to the newly created position of light duty tech/lube man/quality control from used car technician when he returned from the strike and replacement Jones, hired September 14, 1994, as

a used car tech, did most of the used car work until he was terminated January 5, 1995. At that point, instead of having Spenard resume performing the used car work, Respondent demoted Jerry Motta from line technician and began having him do most of the used car work. Motta had been promoted from used car tech to line technician before the strike. Assigning used car work to Motta, instead of the line work on Hondas that Motta had been performing, had a negative impact on Motta's income because it is more difficult to make flat rate time on used car work than new car Honda line work. Otherwise, the Respondent did not justify why it demoted Motta instead of reassigning Spenard and I infer that the movie was to penalize both former strikers.

Between January 1 and March 13, 1995, Respondent required former strikers Motta and Jim Woods to share bays with other employees while replacement employees Cliff Garry and Rick George had their own unshared bays. Motta was assigned his own bay when Dale Parker left in March 1995, however, at the time of the trial Jim Woods was still sharing a bay with other employees. Respondent offered no explanation for the failure to reassign Woods to his old bay, a bay he had worked in the entire term of his employment with Respondent until he returned from the strike. that bay is more desirable that the bay he was assigned after the strike because his old bay had extra space adjacent to it, there was a garage door opener on the doors adjacent to the bay, and is closer to the parts department and therefore more convenient. The Respondent did not offer any explanation as to why, particularly after the matter was called to its attention, it kept the replacement mechanics at their own bays and continued to require Woods and Motta to share bays.

Under the circumstances shown I find that the record fails to persuasively show that the Respondent had legitimate reasons for its apparent discriminatory treatment of the returning strikers and its failure to afford them the same working condition that they enjoyed prior to the strike. Accordingly, I conclude that its actions were retaliatory in nature and I find that they are shown in each instance to have violated Section 8(a)(3) of the Act, as alleged in paragraphs 6(F) through (I) of the complaint.

The General Counsel contends that the strike which commenced on August 9, 1994, was an unfair labor practice strike from its inception and that the failure to reinstate those strikers to their former positions is a violation of Section 8(a)(3). Here, the record shows that at the time of the strike vote the employees clearly were aware of and motivated by Respondent's conduct in telling employees Parker and Motta that if there were no union they could get pay raises. Also, in mid-July Bunfill asked Witges if the mechanics were going to receive this increase. Witges told him no, because of contract negotiations, and the employees were also aware of and upset about Respondent's wage freeze, including this failure to grant the mechanics the 35-cent-per-hour increase they normally would have received on August 1, 1994, when the Union-Association agreement gave employees an increase. Seymour's wage increase also had been withdrawn prior to the strike and, accordingly, I conclude that the strike is shown to have been an unfair labor practice strike. See *Northern Wire Corp.*, 291 NLRB 727 fn.4 (1988), enfd. 887 F. 2d 1313 (7th Cir. 1989); *Capitol Steel & Iron Co.*, 317 NLRB 809, 811 (1995); and *R & H Coal Co.*, 309 NLRB 28 (1992).

Inasmuch as the strike was an unfair labor practice strike from its inception, the Respondent was obligated to reinstate the strikers to their former positions, discharging if necessary any replacements, *Teledyne Still-Man*, 298 NLRB 985 (1990), enfd. mem. 938 F.2d 627 (6th Cir. 1991), and its failure to do so violated Section 8(a)(3) of the Act. *Radio Electric Service Co.*, 278 NLRB 531, 537 (1986). Accordingly, by failing to reinstate Spenard to his former position of used car mechanic; failing to reinstate Seymour to his former position of new car porter, changing the job duties of parts employees Farley, Smith, and Huffmon while having replacements Ken Savant and Lin Rowe perform the duties they previously performed; eliminating Farley's commission; and decreasing the pay of the mechanics by retaining the replacements which decreased the number of flat-rate hours available to the returning striking mechanics, the Respondent violated Section 8(a)(3) of the Act.

The decrease in flat-rate hours is shown to be due to having too many mechanics because for each hour over 40 that a line technician did not bill, he lost his hourly wage plus the $1.50-per-hour bonus. For all mechanics, except Motta and Parker (who had been unlawfully denied their increases upon promotion to the line), the hourly rate was $16.25 or $17.25 per hour. Thus at a minimum, each hour not billed per week was a loss of $17.75 or $18.75. So, by decreasing the flat-rate hours and lowering the returning strikers' wages, Respondent acted illegally. See *New Life Bakery*, 301 NLRB 421, 430 (1991), and I find that the Respondent is shown to have violated Section 8(a)(3) of the Act, in these respects as alleged in paragraph 10 of the complaint.

C. *Alleged Violations of Section 8(a)(5)*

The Respondent imposed a wage freeze shortly after the employees voted for the Union as their collective-bargaining representative and the parties began the process of negotiations. It also took certain other actions in which it acted unilaterally and without notification or bargaining with the Union. These actions occured both before and after January 27, 1995, the date the Respondent asserts that negotiations reached an impasse. On February 20, 1995, the Respondent advised the Union that its last offer would be implemented effective February 27.

The record clearly shows that the Respondent imposed a wage freeze and that Managers Witges and Dwiggins both told employees about the freeze on several occasions. the record also shows that no wage increases were granted from June 1993, to late 1993, to late February 1995, with the exception of employee Seymour, whose raise was subquently reacted, and the increases granted to employees Roth and Fowler who worked during the strike. The wage increases denied by Respondent included increases due the line technicians to match the Union's association agreement (expected on August 1), increases denied on promotions to new jobs (denied to Parker, Motta, and Spenard and taken away from Seymour), and increases due as a result of 60- or 90-day reviews or on an employee's anniversary date.

The August withdrawal of the wage increase it had given to Symour on his promotion to the position of new car porter was without notice to the Union and therefore violated Section 8(a)(5) of the Act. *Millard Processing Services*, 310 NLRB 421, 425 (1993).

In September, Respondent granted wage increases of $2 per hour to Michael Roth and $1.50 per hour to Ron Fowler. Then, on February 1, 1995, Respondent granted another $1-per-hour wage increase to employee Fowler. The Respondent did not notify the Union about these increases and they significantly exceeded the 35 cents it had proposed to the Union as a basic increase. The Respondent characterized these actions as ''promotions'' to new positions but the duties performed remained essentially unchanged and, as found above, I have found the action otherwise violated Section 8(a)(3) of the Act. In any event, the Respondent had an obligation to notify and bargain with the Union because none of the classifications existed prior to that time and I therefore find that the Respondent violated Section 8(a)(1) and (5) of the Act in granting these increases. See *Capitol Steel & Iron Co.*, supra.

Here, the Respondent admittedly had a policy of granting wage increases to its mechanics each August 1 when employees covered by the association agreement with the Union also received increases. In August 1993 (after certification of the Union and the start of bargaining), it did not grant its mechanics the bonus or the premium pay paid to the mechanics covered by the association agreement. The premium pay plan implemented in August 1993 in the association agreement superseded the prior plan of $1.50 per hour extra for all hours over 40 but Respondent continued to pay for its employees under the old plan. The basic increase made in August 1, 1994, shortly before the strike, for the mechanics covered by the association agreement was 35 cents per hour, however, Respondent's mechanics received no increase.

The Respondent never notified the Union that it was discontinuing its usual practice of granting increases and Union Representatives Meinelli and Rippeto testified that he was not told by employees of the wage freeze until July or August 1994. Accordingly, I find that the 6-month-limitation period set forth in Section 10(b) of the Act did not begin to run until the Union received notice in July and August 1994 of the conduct constituting the alleged unfair labor practices labor.

In January 1994, the Respondent and Board reached a settlement agreement to resolve a Board charge not involving any of the issues herein wherein the Union had objected to changes Respondent made in the bonus system and the schedule affecting employees classified as service advisors. There was no issue about hourly wages, and I find that it does not bear on the allegation in this proceeding and otherwise leaves outstanding and unremedied unfair labor practices not covered by the settlement agreement.

Here, although the parties clearly bargained over wages during negotiations, it is equally clear that the Union was unaware of the freeze and therefore cannot be found to have agreed to a change about which it knew nothing or to have clearly and unmistakably waived its right to bargain over a unilateral change in the Respondent's past practice. Under these circumstances, the unilateral imposition of a wage freeze as it applied to the past practices discussed above without notice to and bargaining without notice to and bargaining with the Union is therefore unlawful; see *Daily News of Los Angeles*, 315 NLRB 1236 (1994); and *Harrison Ready Mix Concrete*, 316 NLRB at 242, and in violation of Section 8(a)(5) of the Act, as alleged in paragraphs 8(A) through (C) of the complaint.

When the strikers returned to work in October the Respondent began to enforce a no-smoking policy which had not been enforced prior to the strike and which was more extensive (no smoking in the entire building) then the previous written policy that:

> [E]mployees may not smoke anywhere on the premises visited by customers in the course of a normal working day. This includes the showroom, sales office, service reception area and customer lounge.

As noted by the General Counsel, this policy does not prohibit smoking in the shop or in the mechanics' lounge. By letter to the Union dated July 11, 1994, less than a month before the strike began, Respondent told the Union that the shop rules had not changed. The written policy is consistent with the testimony of General Counsel's witnesses that prior to the strike they were permitted to smoke in the shop and the mechanics' lounge. However, after the strike, the Respondent prohibited all smoking in the building, including the mechanics' lounge and, in addition, it implemented a new safety rule requiring wearing safety glasses by parts employees when making keys.

In neither case did the Respondent notify or bargain with the Union over these changes which are similar to actions found to be illegal in *Hi Tech Cable Corp.*, 309 NLRB 3 (1992); *Hi Tech Cable Corp.*, 318 NLRB 280 (1995); *W-I Forest Products, Co.*, 304 NLRB 957, 959 (1991), and *Pak-Mor Mfg. Co.*, 241 NLRB 801 (1979).

The Respondent also failed to notify the Union about the elimination of the scratch-off bonus plan for line technicians and the four-tenths-of-an hour credit it had given employee James Hill for performing road tests. Both of these benefits have been in effect for a considerable period of time and were linked to the employees' performance.

When the strikers returned the Respondent increased the number of mechanics it employed by retaining 4 replacements mechanics they making the overall number of mechanics 15, versus 11 before the strike. Of those 15, 11 were line technicians instead of the 8 before the strike. the effect of retaining the replacements was that flat-rate hours, and therefore the earnings of the mechanics who returned from the strike decreased considerably inasmuch as without an increase in business, the same amount of work was divided among more people resulting in mechanics who previously earned pay for 50 or more hours per week, earning closer to 40 hours' pay. The Respondent did not notify the Union that it planned to retain the replacements nor did it negotiate with the Union or reach any agreement to that effect. The retention of replacements brought about a decrease in the wages of unit employees without prior notification to the Union. See *Millard Processing Services*, 310 NLRB 421 (1993). Accordingly, I find that in each of these instances that the General Counsel has shown that the Respondent has failed to notify and bargain with the Union over unilaterally imposed changes has thereby violated Section 8(a)(5) of the Act, as alleged in paragraph 8(D) of the complaint.

About January 27, 1995, Respondent also unilaterally changed the flat rate awarded for PDI work from 1.5 hours to 1.4 hours. That resulted in decreased wages[4] for the line

[4] Since about 50 to 60 PDI's were performed each month and were rotated among the line technicians, if there were 8 line technicians

technicians who performed that work. James Hill also testified that he ceased receiving the four-tenths-per-hour credit for performing road tests when he returned from the strike in October 1994, Manager Witges testified that change occurred when Hill was discharged in October 1993. However, Hill was rehired less than a month later. Even if Witges' testimony in this regard is correct, the elimination nevertheless was unlawful as Respondent failed to notify the Union prior to implementing the change. As both these changes were without prior notice to the Union, I find that the Respondent violated Section 8(a)(5) of the Act in this respect as alleged in paragraph 8(E) of the complaint, see *Advertiser's Mfg. Co.*, 280 NLRB 1185, 1197–1198 (1986).

On February 1, 1995, Respondent granted a wage increase to Fowler of $1 per hour and promoted him to a new position of service porter coordinator. Respondent never notified the Union that it was creating the new position or giving Fowler yet another wage increase, but it did hold a meeting of the porters at which it announced that Fowler held the new position.

About August 10, 1994, Respondent created the position of assistant manager of the parts department and placed replacement Ken Savant in that position. Although Respondent had an assistant manager of the parts department until some time in 1992, the position was unfilled prior to the certification of the Union and the job description for that position was not included in those provided to the Union July 9, 1993. Dwiggins admitted the position was new in August 1994, and the Respondent did not notify the Union prior to implementing this change.

About September 3, 1994, Respondent created the position of PDI tech and light duty tech and created the position of used car inventory specialist. As discussed above there are some questions as to the significance of the changes in duties for the occupants of these positions. However, the Respondent granted the job holders increases of $2 and $1.50, and it clearly created new positions, with purportedly different job duties and higher wages without notifying the Union, and I find that in each of these instances it violated Section 8(a)(5) of the Act, as alleged in paragraphs 8(D) and (F) of the complaint. See *Stephenson Haus*, 279 NLRB 998, 1004 (1986).

D. *Impasse*

After the strike concluded, the parties met again on October 25, 1994, January 27, and May 15, 1995. At the October meeting, the Union raised several problems including Respondent's failure to reinstate Tony Spenard to the used car technician position, and the changed schedules of the parts department employees. Respondent gave the Union its final offer with the wage proposal in writing, rather then verbal as before. The Union suggested discussing the cost of Respondent's benefit plans, but Respondent's attorney replied this was their final offer and he saw no need to discuss the matter. At the January meeting, Respondent announced it intended to implement its final offer. By letter dated February 3, 1995, the Union advised Respondent that before Respondent implemented its offer the Union felt there were other issues to discuss such as health and welfare, progressive wage increases, and the 401(k) plan. Respondent's attorney sent the Union a letter stating that it believed the parties were at impasse and that if the Union disagreed, it should contact the Federal Mediator. The Union responded by contacting the mediator and requesting a meeting. By letter dated February 20, 1995, the Respondent notified the Union that it planned to implement its final offer on February 27.

The Respondent argues that in the meetings on October 25 and January 27, the Union's position did not change and remained the same as the last meeting before the strike (July 26), with insistence on the Standard Area Agreement. It notes that its position changed in the October meeting when it presented its ''final'' economic offer which included making its 35-cent-per-hour proposal effective August 1, 1994. It emphasizes that negotiations spanned 18 months with meetings during the last 6 months indicating that neither party was willing to move from its position, that the last two sessions before the impasse was declared were in the presence of the Federal Mediation and Conciliation Service, and that there is no allegation of bad-faith bargaining.

The Respondent also cites the Board's decision in *Taft Broadcasting Co.*, 163 NLRB 475 (1967), which sets forth the standards for determining whether parties have exhausted the prospects of concluding an agreement and a bargaining impasse exists. Factors such as the parties' bargaining history, their good faith, the length of time spent in negotiations, the importance of the issues about which the parties disagree, and the parties' contemporaneous understanding of the status of negotiations are all relevant parts of the analysis.

Regardless of overall subjective bad faith, however, valid impasse may be precluded if there is a causal or consistent connection between illegal unilateral changes made while negotiations were still going on. See *Intermountain Rural Electric Assn. v. NLRB*, 984 F.2d 1562, 1570 (10th Cir. 1993), and unremedied unfair labor practices; *Industrial Union of Machine Workers v. NLRB*, 320 F.2d 615, 621 (3d Cir. 1963).

Here, I find that the Respondent's illegal unilateral changes and unremedied unfair labor practices which occurred during negotiations and prior to its declaration of impasse were such that they negatively impacted the bargaining arena and obstructed bargaining. They included illegal actions regarding wages (both the freezing of most employees' rates of pay and the selective and pretextual gravity of wage increases to others), changes in bonus and flat-rate plans, (changes in job classifications, and changes in working conditions through the retention of replacement employees), which precluded the returning strikers from working under the same conditions they had enjoyed before the strike or restricted some of them from working enough hours to reach the same level of pay. Under these circumstances, I find that although there was little movement on either side after the strike ended and negotiations resumed, the purported deadlock in negotiations was affected by the Respondent's unilateral actions and unfair labor practices and it is therefore impossible to predict where the parties would have stood on the differences between the area standard agreement and the Union's last proposal and the Respondent's final offer in the

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as there were prior to the strike, each would have performed about 6 to 7 PDI's per month. Therefore, each line technician lost $9.75 to $11.38 per month and $117 to $136.50 per year (.6 or .7 hours per month times $16.25, the wage rate in effect prior to March 1995).

absence of the unilateral actions and unfair labor practices. Accordingly, I find that by declaring impasse and thereafter imposing the terms of its final proposal the Respondent violated Section 8(a)(1) and (5) of the Act, as alleged in paragraph 9(A) of the complaint. See also *Serramonte Oldsmobile*, 318 NLRB 80 (1995).

About March 1, 1995, after the implementation of its final proposal, the Respondent also unilaterally increased the wages and altered the bonus plan for its service advisors, and it did so in a manner inconsistent with Respondent's proposal to the Union (a 35-cent-per-hour increase for all employees), by granting increases amounting to $1.73 per hour each for the three service advisors. The increases far surpassed anything proposed to the Union during contract negotiations and the bonus system also changed from what had been in effect since November 1992 (except for the period when Respondent changed the bonus system in September 1993 until late January 1994), and I find that these unilateral changes are another violation of Section 8(a)(5) of the Act, as alleged in paragraph 8(G) of the complaint.

After its declaration of impasse the Respondent continued to make changes in practices that affect terms and conditions of employment without either notice or bargaining with the Union. Thus, by memorandum dated February 24, 1995, Respondent notified its employees that they were required to park their vehicles on a side road next to the facility, or in one of four spots at the rear of the building, rather than in the lot along the east side of Respondent's building where previously, employees had been permitted to park. Parking on the side road was less desirable for employees because they had to walk further and could not see their vehicles because of a drop-off down to the road. In addition, the road was used to deliver automobiles and because the road was so narrow, employees could be blocked in and unable to leave at lunch or in the evening.

By memorandum dated February 27, 1995 (reiterated on March 6), Respondent notified employees that uniforms were not to be removed from the premises except for one set to be worn home and back. Employees who had uniforms at home were required to return them by March 1. Previously, most employees kept their uniforms at home and changed at home because the locker area at Respondent's facility was not an appealing place to dress and some employees laundered their uniformed at home because the preferred laundering the uniforms themselves.

By memorandum dated March 6, 1995, Respondent notified employees that unauthorized persons in the shop area would not be tolerated and any employee found with an unauthorized person in the shop would be disciplined, up to and including termination. Prior to issuing this memorandum, employees had been permitted to have friends and family visit in the shop and nothing was ever said to them.

By memorandum dated March 16, 1995, Respondent changed its policy with regard to working a second job. Previously, Respondent had no such restriction, even though it was aware some employees had other jobs. The memo notified employees that they could work another job only if they had the prior written approval of Respondent and also warned that violation of this rule would subject the employee to immediate discharge without further notice.

By memorandum date March 16, 1995, Respondent notified employees that they were subject to immediate discharge if they repaired automobiles, vans or light trucks, other than their personal vehicles, without Respondent's prior permission. Respondent was aware that employees had performed automotive repair work on the side and never took steps to prohibit that conduct. Employees had discussed this work with members of management, performed work on the side for management's friends, and had personal accounts for materials with Respondent's parts department.

Effective March 1, 1995, respondent implemented a new bonus system for its service advisors and gave them pay increases of $1.73 an hour. This bonus system replaced the one which had been reinstated in January 1994 in settlement of a Board charge. The new bonus system differs from the old system in part by eliminating the potential of a 2-percent bonus. Under the new system the maximum bonus percentage is a 1.5-percent bonus.

These changes were all unilateral and without notice to the Union and, inasmuch as I have found that the Respondent was not privileged to legally implement its final offer, it is irrelevant that its final offer contained a provision permitting it to make reasonable rules. See *Serramonte Oldsmobile*, supra. Accordingly, I find that the changes in terms and conditions of employment violated Section 8(a)(5) of the Act as alleged in paragraphs 9(B) through (F) of the complaint.

CONCLUSIONS OF LAW

1. Respondent is an Employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The unit appropriate for collective bargaining is:

> All regular full-time and part-time service department employees employed by the Employer at its St. Charles Rock Road, St. Louis, Missouri facility, EXCLUDING sales people, office clerical and professional employees, guards, and supervisors as defined in the Act.

4. Since being certified on June 21, 1993, the Union has been, and is, the exclusive representative of the Unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. By impliedly promising a promotion if an employee refrained from supporting a strike; implying that there would be a wage increase if the Union were decertified and stating that there was a decertification petition in a supervisor's office that they could sign; telling employee that those who went out on strike would lose their jobs; telling an employee that the general manager was not pleased that he joined the Union; threatening an employee with loss of his job and threatening unspecified losses for union troublemakers if they went on strike; telling employees they could not get their vacation pay because of the strike; telling replacement employees that rules would be strictly enforced so that returning strikers could be fired; telling nonstriking employees that strikers were idiots and that management couldn't wait to get rid of them; and interrogating an employee about his receiving a Board subpoena, the Respondent has interfered with, restrained, and coerced employees in the exercise of their rights guaranteed them by Section 7 of the Act, and thereby

has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

6. By discriminatorily changing terms and conditions of employment and taking disciplinary action by reducing employee wages; delaying and denying timely receipt of employees' vacation pay; granting pay increase to nonstriking employees; demoting or giving different and less desirable positions and duties to returning strikers; eliminating the bonus and billing benefits and commission plans previously enjoyed by returning strikers, imposing and enforcing a more strict no-smoking policy and other rules; restricting use of computers, issuing warnings; failing to reinstate returning strikers to their former positions; denying increases for promotions; and by following practices which reduced the earnings of returning strikers because of or in retaliation for their engaging in a union strike or other protected concerted activity, Respondent has violated Section 8(a)(1) and (3) of the Act.

7. By unilaterally making changes in terms and conditions of employment after the certification of the Union as the collective representative of the unit employees without notice to or bargaining with the Union, including imposing a wage freeze contrary to past practices; granting wage increases for new job classifications; expanding and enforcing a no-smoking policy; implementing new safety rules; withdrawing an employees job promotion wage increase; granting selective increases in amounts in excess of those proposed to the Union in negotiations; changing bonus and rate billing practices; increasing the number of employees by retaining replacement workers and dividing the available work among more people with a resulting decrease in real wages; implementing its final offer without a valid impasse being reached; changing employee parking to a less desirable location; changing employee uniform and visitor rules; and imposing restrictions on employees holding a second job and performing repair work on their own time, Respondent has violated Section 8(a)(1) and (5) of the Act.

8. The Respondent otherwise is not shown to have engaged in conduct violative of the Act as alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it necessary to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that Respondent be ordered to make employees whole for any loss of benefits they may have suffered because of the discrimination practiced against them by payment to them a sum of money equal to that which they normally would have earned in accordance with the method set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and make whole unit employees for any loss of earnings and other benefits suffered as a result of the unilateral changes, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[5] Because of its unlawfully declared impasse, the record shows that the Respondent engaged in bad-faith bargaining. The Respondent also engaged in extensive and pervasive illegal practices and it encouraged employees to seek decertifiaction of the Union and therfore, I recommend that the certification year be extended by 12 months, as proved in *Thill, Inc.*, 298 NLRB 669 (1990).

I also find that a broad Order is warranted because the Respondent has shown a proclivity to violate the Act and has engaged in such egregious and widespread misconduct as to demonstrate a general disregard for employees' statutory rights. *Hickmott Foods*, 242 NLRB 1357 (1979).

[Recommended Order omitted from publication.]

[5] Under *New Horizons*, interest is computed at the ''short term Federal rate'' the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.